

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E D N Y

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IN RE HURRICANE SANDY CASES

★ MAR 18 2016 ★
LONG ISLAND OFFICE

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THIS DOCUMENT APPLIES TO:

MEMORANDUM AND ORDER

Nogueira v. Travelers Casualty Co.,
No. 14-CV-3369

14-MC-41

(Wexler, J.)

Sperber v. Am. Sec. Ins. Co.,
No. 14-CV-3410

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WEXLER, District Judge:

The above-captioned insurance disputes, both arising out of Hurricane Sandy, were commenced on May 29, 2014, alleging claims for breach of contract. In both cases, Defendants were not properly served within 120 days of the filing of the Complaint, as required by Federal Rule of Civil Procedure 4(m).¹

By Report and Recommendation dated February 9, 2016, Magistrate Judge Brown recommended that both of the within actions be dismissed pursuant to Federal Rule of Civil Procedure 41(b), for failure to prosecute.² Magistrate Brown's Report and Recommendation advised Plaintiffs that any written objections were to be filed within fourteen days of service of

¹ The Federal Rules of Civil Procedure were amended subsequent to the commencement of the above-captioned actions to now require service within ninety days of the filing of the complaint. See Fed. R. Civ. P. 4(m) (as amended, effective Dec. 1, 2015).

² In Sperber, Defendant filed a motion to dismiss for failure to prosecute, despite never being properly served with the Complaint, which Magistrate Brown recommends granting. Magistrate Brown's recommendation that the complaint in Nogueira be dismissed is issued sua sponte.

the Report and Recommendation. (R&R at 6.) The Report and Recommendation was dated and docketed on the Court's electronic filing system on February 9, 2016. To date, no objections have been received.

The Report and Recommendation states that it was mailed to Plaintiffs' last known addresses. The Report and Recommendation sent to Plaintiff Nogueira was returned as undeliverable and unable to be forwarded on February 29, 2016. The Report and Recommendation sent to Plaintiff Sperber was not returned. Notwithstanding that Plaintiff Nogueira did not receive the Report and Recommendation, as Magistrate Brown notes, it is the plaintiff's obligation to update the Court as to any change of address. (R&R at 5 (citing Desouza v. Fischer, No. 12-CV-0821, 2015 WL 4104794, at *5 (E.D.N.Y. July 8, 2015) (collecting cases)). Plaintiff Nogueira has failed to fulfill this obligation.

Accordingly, the time to file objections to the recommendation of Magistrate Brown having passed without receipt of any objections thereto, the Report and Recommendation is hereby adopted and both of the above-captioned cases are dismissed, with prejudice, for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b).

SO ORDERED:

Dated: Central Islip, New York
March 18, 2016

/s/
LEONARD D. WEXLER
United States District Judge